

Article 6.

Appointment of Personal Representative.

§ 28A-6-1. Application for letters; grant of letters.

(a) The application for letters of administration or letters testamentary shall be in the form of an affidavit sworn to before an officer authorized to administer oaths, signed by the applicant or the applicant's attorney, which may be supported by other proof under oath in writing, all of which shall be recorded and filed by the clerk of superior court, and shall allege the following facts:

- (1) The name, and to the extent known, the domicile and the date and place of death of the decedent;
- (2) The legal residence and mailing address of the applicant;
- (3) The names, ages and mailing addresses of the decedent's heirs and devisees, including the names and mailing addresses of the guardians of those having court-appointed guardians, so far as all of these facts are known or can with reasonable diligence be ascertained;
- (4) That the applicant is the person entitled to apply for letters, or that the applicant applies after persons having prior right to apply are shown to have renounced under Article 5 of this Chapter, or that the applicant applies subject to the provisions of G.S. 28A-6-2(1), and that the applicant is not disqualified under G.S. 28A-4-2.
- (5) The nature and probable value of the decedent's property, both real and personal, and the location of such property, so far as all of these facts are known or can with reasonable diligence be ascertained; and
- (6) If the decedent was not domiciled in this State at the time of the decedent's death, a schedule of the decedent's property located in this State, and the name and mailing address of the decedent's domiciliary personal representative, or if there is none, whether a proceeding to appoint one is pending.

(b) If it appears to the clerk of superior court that the application and supporting evidence comply with the requirements of subsection (a) of this section and on the basis thereof the clerk finds that the applicant is entitled to appointment, the clerk shall issue letters of administration or letters testamentary to the applicant unless in the clerk's discretion the clerk determines that the best interests of the estate would be served by delaying the appointment of a personal representative, in which case the clerk may appoint a collector as provided in Article 11.

(c) The clerk of superior court may rely upon the following as evidence of death:

- (1) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred.
- (2) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, evidencing the date of death.
- (3) A certificate or authenticated copy of medical records, including a record of death, evidencing the date of death.
- (4) Any other evidence that the clerk of superior court deems sufficient to confirm the date of death. (C.C.P., s. 461; Code, s. 1381; Rev., s. 26; C.S., s. 28; 1973, c. 1329, s. 3; 2011-344, s. 4.)

§ 28A-6-2. Letters issued without notice; exceptions.

Letters of administration or letters testamentary may be issued without notice, including upon a finding of implied renunciation under G.S. 28A-5-1(b) or G.S. 28A-5-2(b), except:

- (1) When the applicant is not entitled to priority of appointment under G.S. 28A-4-1, all persons entitled to an equal or higher preference shall be given 15 days prior to written notice of that application, unless they have renounced in accordance with the provisions of Article 5 of this Chapter.
- (2) The clerk of superior court may in any case require that prior written notice be given to such interested persons as the clerk, in the clerk's discretion, may designate prior to the granting of letters. (1973, c. 1329, s. 3; 2011-344, s. 4.)

§ 28A-6-3. Appointment of successor to personal representative.

When the appointment of a sole or last surviving personal representative is terminated by death, resignation pursuant to Article 10 of this Chapter, or revocation pursuant to Article 9 of this Chapter, the clerk of superior court shall appoint another personal representative as provided by G.S. 28A-4-1 to act as successor to the sole or last surviving personal representative. When two or more personal representatives have qualified, and the appointment of one or more of them is terminated by death, resignation or revocation, leaving in office one or more personal representatives, the appointment of successors shall not be required unless:

- (1) The clerk of superior court determines, in the clerk's discretion, that it is in the best interest of the estate to appoint a successor or successors to such personal representative or personal representatives, or
- (2) In the case of executors, the will so provides. (1868-9, c. 113, s. 92; Code, s. 1521; Rev., s. 35; C.S., s. 32; 1973, c. 1329, s. 3; 2011-344, s. 4.)

§ 28A-6-4. Right to contest appointment; procedure.

Prior to the issuance of letters, any interested person may, by written petition filed with the clerk of superior court, and served upon such interested persons as the clerk of superior court may direct, contest the issuance of letters of administration or letters testamentary to a person otherwise entitled to apply for letters of administration or letters testamentary. After a petition has been duly filed, the clerk of superior court shall conduct a hearing and determine to whom letters shall be issued. Appeal may be taken from the order of the clerk as in an estate proceeding pursuant to G.S. 1-301.3. (C.C.P., s. 462; Code, s. 1382; Rev., s. 27; C.S., s. 29; 1973, c. 1329, s. 3; 1975, c. 300, s. 2; 2011-344, s. 4.)

§ 28A-6-5. Letters not subject to collateral attack.

The validity of letters issued shall not be subject to collateral attack. (1973, c. 1329, s. 3.)